IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SEVENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 22474 of 2004

Between:

Sameera Ismail, D/o. Mirza Ismail Baig, R/o. H.No. 18-8-117/17/A, Mubarakdullah Colony, Santoshnagar, Hyderabad A.P.

..... PETITIONER

AND

1 The Secretary for Education, Govt. of A.P., at Secretariat, Hyderabad.
2 The Secretary, State Council for Higher Education, at Saifabad, Hyderabad, A.P.
3 The Director of Education, State Council for Higher Education, Saifabad, Hyderabad.
4 The Secretary, Islamia College of Education, SRT Colony, Yakutpura Hyderabad.
5 The Vice Chancellor, Osmania University, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus, order or direction under Article 226 of the Constitution that; (a) Action of Respondents R-1 to R-3 and R-5 in cancelling admission in the B.Ed. Course in R-4's college of nine months after pursuing studies for five months as highly illegal, arbitrary, unjust, unlawful, ultra vires, unconstitutional being violative of Article 14, 19 and 21 of Constitution of India and also in violation of principles of Natural Justice, (b) That none of the Respondents shall put any impediment in the way of petitioner to pursue her studies and to appear in the ensuing B.Ed examination conducted by R-5 and for all practical purposes, she be treated as a bonafide student of B.Ed course.

For the Petitioner: MR.T.MOHAN RAO, Advocate

For the Respondent Nos.1 to 3: GP for Higher Education

For the Respondent No.4: --

For the Respondent No.5: Mr.DEEPAK BHATTACHARJEE, SC for OU

The Court made the following :

THE HON'BLE SRI JUSTICE N.V. RAMANA

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W.P. No. 22474 of 2004

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O r d e r:

The petitioner passed B.Com degree with 40% marks from Dr. B.R. Ambedkar Open University, Hyderabad. To pursue higher studies, the petitioner appeared for EDCET-2003, conducted by Osmania University. On being qualified in EDCET-2003 (Education Common Entrance Test-2003) to take admission, she applied for B.Ed. Course admission, and was admitted into B.Ed. Course in respondent No.4-Islamia College of Education. At the time of admission, the petitioner claims to have paid Rs.35,000/- towards capitation fee, and Rs.10,800/- towards admission fee. The petitioner states that having been admitted to B.Ed. Course, she even attended classes regularly from June, 2004 for a period of six months out of the nine months of the course period.

While so, it is the case of the petitioner that respondent No.4-college directed her not to attend the classes, as respondent No.5-Osmania University rejected her admission on the ground that she secured less than 45% marks in the qualifying exam (i.e. graduation) for admission into B.Ed. Course. The petitioner states that at the time of her admission into B.Ed. Course, the respondents have not taken any objection as to the marks, which are less than 45% marks secured by her in the qualifying exam for admission into B.Ed. Course, and inasmuch as knowing fully well that she got 40% in B.Com., respondent No.4-college had admitted her into B.Ed. Course and permitted her to attend the classes for six months, the petitioner states that she legitimately expected that her admission into B.Ed. Course is proper, and even if her admission is not in accordance with the Rules, respondent Nos. 4 and 5, having permitted the petitioner to attend the classes, are estopped from rejecting her admission into B.Ed. Course. The petitioner thus prayed that the writ petition be allowed and the respondents be directed to permit the petitioner to

complete the B.Ed. Course.

Heard the learned counsel for the petitioner and the learned Standing Counsel for respondent No.5-University.

The learned counsel for the petitioner submits that under Rule 4(2) of the A.P. Colleges of Education (Regulation of Admission into B.Ed. Course Through Common Entrance Test) Rules, 1989 issued by the Government in G.O. Ms. No. 154, Education (Rules), dated 27-4-1989, a pass in the qualifying exam is enough for seeking admission into B.Ed. Course. He submits that inasmuch as the petitioner has passed the qualifying exam for admission into B.Ed. Course, her admission into the said course could not have been rejected by respondent No.5-University. Be that as it may, he submits that inasmuch as respondent No.4-college knowing fully well that the petitioner had secured 40% marks in the qualifying exam and is ineligible for admission into B.Ed. Course, yet had admitted the petitioner and permitted her to attend the classes of the said course for six months, it is not proper on their part to direct the petitioner not to attend the classes on the ground that respondent No.5-University had rejected her admission for the reason that she secured less than 45% marks in the qualifying exam for admission into B.Ed. Course, and that the respondents are estopped from rejecting the admission. He submits that inasmuch as the petitioner, apart from paying admission fee, had also paid huge capitation fee, and if after completion of six months of the B.Ed. Course, the petitioner's admission is rejected and she not permitted to attend the classes, she would be put to irreparable loss. He submitted that inasmuch as respondent No.4-college had permitted the petitioner to attend the college, and in fact, the she had attended the college for six months, the petitioner legitimately expected that her admission into B.Ed. Course is proper. In support of his various contentions, he placed reliance on several judgements of the apex Court and of the High Courts in **Dasaratha Rama Rao v. State of Andhra Pradesh**, **Tata Engineering and Locomotive Co. Ltd., v. The Assistant Commissioner of Commercial Taxes**, **Shri Anadi Mukta Sadguru S.M.V.S.J.M.S. Trust v. V.R. Rudani**, **Supreme Court Employees Welfare Association v. Union of India**, **Sanatan Gauda v. Berhampur University**, **K.R. Shivadatta v. Govt. Medical College**, **Pratima Das v. State of Orissa**, **Manoj Kumar v. Co-ordinator, A.C.M.N.R. Engineering College**, **Punjab Engineering College v. Dharminder Kumar Singhal**, **K. Anand v. Convenor, Engineering Agricultural Medical**

Common Entrance Test, 1986, Hyderabad, **Haruhabder Singh v. Selection Committee, K.M.C. Warrangal**, and **Abhishek Srivastava v. Sate of U.P..**

The learned Standing Counsel for respondent No.5-University on the other hand submitted that for admission into B.Ed. Course, the student seeking admission should have secured 45% marks in the qualifying exam, and inasmuch as the petitioner has secured only 40% marks in the qualifying exam, her admission made by respondent No.4-college, was violative of the admission Rules governing the B.Ed. course, and therefore, respondent No.5-University, rejected the admission of the petitioner, and no exception can be taken to such action. The A.P. Colleges of Education (Regulation of Admission into B.Ed. Course Through Common Entrance Test) Rules, 1989 issued by the Government in G.O. Ms. No. 154, Education (Rules), dated 27-4-1989, are not binding on respondent No.5-University, and the petitioner has to go by the EDCET-2003 Rules, under which she was admitted, and which Rules, prescribe minimum of 45% marks to be secured in the qualifying exam for admission into B.Ed. Course. Inasmuch as respondent No.4-college, knowing fully well that the Rules prescribe minimum of 45% marks in the qualifying exam for admission into B.Ed. Course, yet had admitted the petitioner, who secured 40% marks in the qualifying marks, it amounts to malpractice on the part of respondent No.4-college in making the admissions. He further submitted that inasmuch as the very admission of the petitioner into B.Ed. Course was made by respondent No.4-college in violation of the Rules governing admission into B.Ed. Course, she cannot claim to have expected legitimately that her admission is legal, for she was permitted to pursue the course for six months. He, thus, prayed that the writ petition be dismissed.

According to EDCET-2003, a candidate seeking admission to B.Ed. Course, has to secure a minimum of 45% marks in the qualifying exam. The petitioner, admittedly, secured 40% marks in the qualifying exam. Though the petitioner was ineligible to be admitted into B.Ed. Course, yet respondent No.4-college, gave admission to the petitioner, which is in sheer violation of EDCET-2003. No doubt, the petitioner upon joining the B.Ed. Course, had pursued six months, that by itself cannot be a ground not to reject her admission, which was made by respondent No.4-college in violation of EDCET-2003. Respondent No.4-college being affiliated to respondent No.5-University, while making admissions is bound to follow the EDCET-2003, which govern the admissions into B.Ed. Course. Inasmuch as the

petitioner had secured only 40% marks in the qualifying exam, respondent No.4-college, could not have given her admission. Inasmuch as at the time of scrutiny of the admissions made by respondent No.4-college, it came to the notice of respondent No.5-University that the petitioner's admission into B.Ed. Course, was not in accordance with EDCET-2003, they rejected the admission of the petitioner, and no exception can be taken thereto. The petitioner, by filing writ petition, cannot seek to legalize her admission, which was made by respondent No.4-college in violation of EDCET-2003. Merely, because the petitioner was permitted to attend the classes for a period of six months, the petitioner cannot claim estoppel against respondent No.5-University to permit her to continue in the B.Ed. Course, and more so when the admission was made by respondent No.4-college in violation of EDCET-2003, and likewise, she cannot expect any legitimacy for her continuance, particularly when respondent No.5-University had not made any promise to the petitioner that even though she secured less than 45% marks in the qualifying marks, her admission to B.Ed. Course made by respondent No.4-college, would be regularized. Therefore, reliance placed by the learned counsel for the petitioner in support of his various contentions, noted above, do not help him in any manner.

In the above view of the matter, no exception can be taken to the action of respondent No.5-University in rejecting the admission of the petitioner into B.Ed. Course made by respondent No.4-college in violation of EDCET-2003. Inasmuch as the respondent No.4-college had admitted the petitioner into B.Ed. Course in violation of EDCET-2003, knowing fully well that the petitioner is ineligible to be admitted into B.Ed. Course, for she secured less than 45% marks in the qualifying exam, and having regard to the statement made by the petitioner that apart from paying admission fee, she has also paid huge capitation fee to respondent No.4-college, and inasmuch as collection of capitation fee is prohibited under the A.P. Educational Institutions (Regulation of Admissions and Prohibition of Capitation Fee) Act, 1983, the petitioner can proceed against respondent No.4-college for refund of the capitation fee, apart from the other civil and criminal remedies available to her, in the form of claiming damages for wasting of one precious year and for cheating her by giving admission into B.Ed. Course, knowing fully well that she is ineligible to be admitted.

With the above observations, the writ petition is dismissed. No costs.

N.V. RAMANA, J.

Date: 27th December, 2004.

KSR

To

1 The Secretary for Education, Govt. of A.P., at Secretariat, Hyderabad.
2 The Secretary, State Council for Higher Education, at Saifabad, Hyderabad, A.P.
3 The Director of Education, State Council for Higher Education, Saifabad, Hyderabad.
4 The Secretary, Islamia College of Education, SRT Colony, Yakutpura Hyderabad.
5 The Vice Chancellor, Osmania University, Hyderabad.

6 Two CCs., to Govt. Pleader for Higher Education, High Court Buildings, A.P., Hyderabad (OUT).

7 Two CD copies.